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SIPDIS

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SUBJECT: OTTAWA REQUESTS GUIDANCE ON LEGISLATION ADDRESSING  
CROSS-BORDER DRUG TRADE

REF: A. OTTAWA 3482

[B](#). OTTAWA 1803

[1](#)1. (SBU) Summary and action request: The U.S. pharmaceutical industry has repeatedly asked for Embassy support for Canadian legislation to ban bulk exports of drugs from Canada, in anticipation of Congressional action to legalize bulk imports into the United States. A Canadian drug export ban, pre-emptive or reactive, raises NAFTA national treatment issues and is not necessarily in our interest at a time when we are trying to develop systematic policy responses to avian flu or other potential pandemics. Action request: While the legislation will not progress until Parliament returns, Post requests USG guidance on how to respond to inquiries about our position on this legislation. Post believes that USG should remain neutral on this issue and requests guidance supporting that position. End Summary.

[1](#)2. (U) Bill C-83, "An Act to amend the Food and Drugs Act (drug import restrictions)" had the dubious honor of being the last legislation to be tabled before Parliament was dissolved at the end of November. Stakeholders generally see the introduction of the legislation as a political ploy, allowing the Health Minister to take credit for action without committing much political capital. The issue has played no role in the political campaign so far, and one industry contact describes it as "more of a shield than a weapon". Because it was introduced but not passed before the government fell, it will need to be re-introduced after the January 23 elections.

The mechanism: shortage-based restrictions

[1](#)3. (SBU) Bill C-83 gives the Health Minister the authority to prohibit "...export of a drug or class of drugs if the Minister is of the opinion that there is a shortage or likely shortage of a drug or class of drugs (in Canada)." The bill attracted minimal press coverage and seems to have disappointed most major stakeholders, many of whom (including internet pharmacies and the pharmaceutical industry, traditional adversaries) supported a pre-emptive bulk ban. The Canadian pharmaceutical industry dislikes C-83's approach because of its uncertainty and selectivity, while the internet pharmacy industry had hoped that the bill would specifically address "contrived shortages" (that is, counteract major drug companies' decisions to restrict sales to internet pharmacies.) Patient and doctors' groups worry that the proposal to monitor for potential shortages is not workable, pointing out that once a shortage or even a threat of a shortage is evident, it may be impossible to react quickly enough.

Other provisions

[1](#)4. (SBU) The bill specifically excepts from any potential export restriction any "individual in Canada if the drug is for the use of the individual or an accompanying dependent and the quantity of the drug sold or exported...does not exceed the quantity required for a 90-day period." This exception seems to leave the door open to Americans who physically cross the border to buy drugs in Canada. Bill C-83 does not address Health Minister Dosanjh's personal campaign against co-signing (the practice of a Canadian doctor signing masses of American prescriptions with little or no contact with the patient). However, Health Canada states that it is still assessing feedback on the co-signing issue. Based on our consultations with stakeholders, we suspect that the feedback ranged from lukewarm to strongly opposed.

Public reaction and potential anti-American rhetoric

[1](#)5. (SBU) The cross-border drug trade is not, so far, an issue in Canada's current election campaign. Anti-American rhetoric is popular at the moment, however, and it is possible, although not probable, that the cross-border drug trade issue could re-emerge. During President Bush's visit to Canada last year, press commentary treated suggestions that Canada might consider regulating prescription drug exports as U.S. "bullying" of Canada to enforce U.S. laws. During the

last round of attention to the issue, Health Minister Dosanjh told the House of Commons Health committee that "one faction (of U.S. politicians) wants to actually openly smash our pricing regime..."

#### Action Request

16. (SBU) A number of Canadian stakeholders, as well as U.S. pharmaceutical manufacturers and their subsidiaries, continue to seek ways to stem the tide of low-priced drug re-exports to the United States. Some are genuinely concerned about shortages and price pressures in Canada, while others may be hoping to short-circuit pending U.S. legislation to legalize bulk exports of price-controlled drugs from Canada, which could disrupt the traditional regulatory segmentation of the two markets that allows pharmaceutical companies to maintain large price differentials in the two countries. However, in our view an export ban could raise NAFTA national treatment concerns down the road. It is also a potentially complicating factor in future efforts to develop effective North American responses to potential pandemics or other health crises, especially as there is no mirroring U.S. legislation. As such, we do not believe it is in our long-term national interest to promote the potential use of export bans, and we recommend maintaining USG neutrality on this issue. Action Request: We request guidance from Washington agencies and recommend that the guidance be to remain neutral on the issue.

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